

**BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

In the Matter of	)	
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Opinion requested by	)	No. O-04-093
David W. Roberts	)	October 7, 2004
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BY THE COMMISSION: David W. Roberts has requested an opinion of the Fair Political Practices Commission on the following question:

**I. Question**

Does Mr. Roberts have economic interests arising from his domestic partnership as a result of Assembly Bill 205?

**II. Conclusion**

Mr. Roberts' domestic partner is not a "spouse" for purposes of the Act. Therefore, no economic interests will arise for Mr. Roberts solely by virtue of his domestic partnership. Assembly Bill 205 does not create potentially disqualifying economic interests.

**III. Facts**

Mr. Roberts is running for the Solana Beach City Council. He and his registered domestic partner own a home in Solana Beach and are jointly responsible for each other's basic living expenses. Mr. Roberts' partner is a part-time salaried property manager for an oceanfront condominium complex in Solana Beach. In December 2003, Mr. Roberts and his partner sold an individual condominium unit where his domestic partner is currently employed as the property manager. He has no other interest in this oceanfront condominium complex.

**IV. Analysis**

**A. Law**

The Act's conflict-of-interest provisions ensure that public officials "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Specifically, section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

A public official has a “financial interest” in a governmental decision within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official’s economic interests. (Section 87103; regulation 18700(a).) The Commission has adopted a standard eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

The conflict-of-interest issue raised by Mr. Roberts concerns the identification of his economic interests, Step 3 of this analysis. Section 87103 identifies the following economic interests:

- A public official has an economic interest in a business entity<sup>1</sup> in which he or she has a direct or indirect investment<sup>2</sup> of \$2,000 or more (section 87103(a); regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (section 87103(d); regulation 18703.1(b));
- A public official has an economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (section 87103(b); regulation 18703.2);
- A public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (section 87103(c); regulation 18703.3);
- A public official has an economic interest in any source of gifts to him or her if the gifts aggregate to \$340 or more within 12 months prior to the decision (section 87103(e); regulation 18703.4);
- A public official has an economic interest in his or her personal finances, including those of his or her immediate family -- this is the “personal financial effects” rule (section 87103; regulation 18703.5).

## **B. Application of Law**

The only economic interests about which Mr. Roberts has provided information are his interests in the source of his domestic partner’s income<sup>3</sup>, and the source of the proceeds from the sale of his condominium unit.

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1 “Business entity” means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association. (Section 82005.)

2 An indirect investment or interest means any investment or interest owned by the spouse of an official or by a member of the official’s immediate family, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater. (Section 87103.)

3 We assume, for purposes of this analysis that this figure aggregates to \$500 or more within the last 12 months before any affected governmental decision.

*Purchasers of the Condominium as a Source of Income:* If Mr. Roberts is elected, the purchasers of the condominium unit will qualify as his economic interests for a 12 month period after receipt of the payment. Since he sold the unit in December 2003, we will not further analyze this economic interest.<sup>4</sup>

*Other Sources of Income:* Section 82030 defines “income” to include “any community property interest in the income of a spouse.” Traditionally, the Commission has considered and applied family law concepts when analyzing community property issues. (See *Morales* Advice Letter, No. A-99-246(a); *Hackard* Advice Letter, No. A-84-070; *In the Matter of Art Torres*, 2 FPPC Ops. 31.) This approach has been used when analyzing both disclosure and disqualification obligations under the Act. (*Grigg* Advice Letter, No. I-02-184; *Moen* Advice Letter, No. A-01-078.)

However, the family law “community property” rule has been applied only in the context of a marital relationship. (*Ibid.*) For example, in the *Moen* letter, we considered Family Code section 299.5(d) which stated that a domestic partnership did not create community property or quasi-community property. Assembly Bill 205, when in effect, will change the scope of “community property.” (Chapter 421, Stats. 2003.) In particular, this bill repeals Family Code section 299.5 and provides that registered domestic partners have the same rights and obligations as spouses under the law without modifying the word spouse. Thus, as of January 1, 2005, it appears that Mr. Roberts will have a community property interest in his domestic partner’s income.

However, as noted above, the Act expressly provides that “income” includes “any community property interest in the income of a spouse.” (Section 82030. Emphasis added.) The more pertinent question is whether the term spouse has been redefined. Assembly Bill 205 does not affect the definition of the term “spouse.” The bill specifically states that: “[t]his section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.” (Family Code section 297.5(j), effective January 1, 2005.) Because the Act was adopted by initiative, the passage of Assembly Bill 205 does not amend terms found within the Act, including “spouse” and “immediate family.”<sup>5</sup>

Therefore, for purposes of the Act, an economic interest in a source of income that arises from a community property interest will arise only from a community property interest *in the income of a spouse*. Because Mr. Roberts has a community property interest in the income of his domestic partner, rather than in the income of a spouse, he will not have an economic interest in the source of his domestic partner’s income.<sup>6</sup> This is consistent with our prior advice analyzing

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4 If the purchasers are the subject of a governmental decision once Mr. Roberts assumes office, he is advised to seek further assistance.

5 The term “immediate family” means the spouse and dependent children. (Section 82029.)

6 Mr. Roberts states that he shares living expenses. It should be noted that a domestic partner can be a source of income or gifts to an official in the same manner as any other person could. (*Grigg, supra.*) However, gifts in a bona fide dating relationship are disregarded. (*Grigg, supra;* *Albuquerque* Advice Letter, No. A-00-120.) We do not analyze herein whether Mr. Roberts’ domestic partner is or is not otherwise a source of income or gifts to him.

whether a domestic partner is a spouse for purposes of the Act. (*Moen, supra.*) We do not view Assembly Bill 205 as requiring a different analysis.

*Interests in Real Property and Investments:* The Act treats “interests in real property” and “investments” in a manner that differs from income. Neither definition relies on community property language to impute an economic interest to the official. The new law does not give Mr. Roberts an economic interest in real property or an investment interest in his domestic partner’s real property or business investments for purposes of the Act solely by virtue of his domestic partnership.

*Personal Financial Effect:* Mr. Roberts also has an interest in his personal expenses, income, assets, or liabilities, as well as those of his immediate family. This is known as the “personal financial effects” rule. (Section 87103; regulation 18703.5.) Consistent with the above analysis, Mr. Roberts’ domestic partner is not considered part of his “immediate family”<sup>7</sup> for purposes of the “personal financial effects” rule.

In sum, Mr. Roberts’ community property interest in his domestic partner’s income from his partner’s employment at an oceanfront condominium will not preclude him from voting on decisions involving his partner’s employer, but may present conflict-of-interest issues if a specific governmental decision will in some way have a material financial effect on some other economic interest arising from other financial arrangements with his domestic partner. Of course, he must also consider a particular decision’s effect on any other economic interests he may have.

Adopted by the Commission on October 7, 2004. Concurring:  
Dissenting:

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Liane Randolph  
Chairman

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<sup>7</sup> See Footnote 5.